Department of Health and Human Services
Office of Inspector General
Office of Audit Services

February 2025 | A-04-21-06251

Mental Health Center of Florida Generally Met Medicare Billing Requirements for Some Psychotherapy Services

REPORT HIGHLIGHTS

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Mental Health Center of Florida Generally Met Medicare Billing Requirements for Some Psychotherapy Services

Why OIG Did This Audit

- During calendar year 2019, Medicare Part B paid approximately $1 billion for psychotherapy services.
- Prior Office of Inspector General (OIG) audits of psychotherapy providers identified a high number of improper payments and found that providers did not always comply with Medicare billing requirements.
- This audit examined whether Mental Health Center of Florida (MHCF) complied with Medicare requirements when billing for psychotherapy services.

What OIG Found

- For 1 of 100 sampled claim lines, MHCF billed an incorrect Current Procedural Terminology (CPT) code. The error occurred because the provider inadvertently billed the incorrect CPT code.
- Since our audit period ended, MHCF stated that it updated its internal controls, including additional quality assurance steps, to increase compliance with Medicare requirements.

What OIG Recommends

We recommend that Mental Health Center of Florida monitor and evaluate the effectiveness of its quality assurance program updates to ensure that documenting of time spent on psychotherapy services meets Medicare requirements.

MHCF did not indicate concurrence or nonconcurrence with our recommendation.

TABLE OF CONTENTS

INTRODUCTION

WHY WE DID THIS AUDIT

Medicare paid approximately $1 billion for psychotherapy services provided to Medicare enrollees nationwide during calendar year 2019. Prior Office of Inspector General (OIG) audits and reviews found that Medicare had made millions of dollars in improper payments for mental health services (including psychotherapy services) that were billed incorrectly, provided by unqualified providers, inadequately documented, or medically unnecessary (see Appendix B for a list of related OIG reports).

After analyzing Medicare Part B psychotherapy claims data provided during 2019, we found that Mental Health Center of Florida (MHCF) was among the highest-reimbursed individual providers in the nation.

OBJECTIVE

Our objective was to determine whether MHCF complied with Medicare requirements when billing for psychotherapy services.

BACKGROUND

The Medicare Program and the Role of Medicare Administrative Contractors

The Medicare program provides health insurance coverage to people aged 65 years and older, people with disabilities, and people with end-stage renal disease. CMS administers the program.

Medicare Part B provides supplementary medical insurance for medical and other health services, including outpatient psychotherapy. CMS contracts with Medicare Administrative Contractors (MACs) to process and pay Part B claims for defined geographic areas (jurisdictions). During our audit period (January 1, 2019, through December 31, 2020), First Coast Service Options, Inc., was the MAC that processed and paid the MHCF's Medicare claims.[1] A provider must submit claims to the MAC that serves the jurisdiction in which the provider is physically located, even if the enrollee is located in a different MAC jurisdiction.

[1] This was the most recently available data at the start of our audit.

Psychotherapy and Medicare Coverage of Psychotherapy Services

Psychotherapy treats mental illness and behavioral disturbances. A physician or other qualified health care professional establishes professional contact with the patient and, through therapeutic communication and techniques, attempts to alleviate emotional disturbances, reverse or change maladaptive patterns of behavior, and encourage personality growth and development. Problems helped by psychotherapy include difficulties in coping with daily life; the effect of trauma, medical illness, or a loss; and specific mental disorders, such as depression or anxiety. Psychotherapy may be used in combination with medication or other therapies.

Medicare Part B covers mental health services, such as individual and group psychotherapy, provided by qualified professionals (e.g., physicians, psychiatrists, clinical psychologists, clinical social workers, nurse practitioners, and physician assistants).[2] To provide such services a provider must be licensed or legally authorized to perform the services by the State in which the services are provided.[3] Medicare also pays for services billed incident-to the service of a physician or certain other practitioners.[4]

Medicare requires that psychotherapy services be reasonable and necessary for the diagnosis or treatment of an enrollee's illness.[5] Providers bill Medicare for individual psychotherapy

[2] The Social Security Act (the Act) §§ 1832(a)(I) and 1861(s); 42 CFR §§ 410.20, 410.71, and 410.73-410.75.

[3] 42 CFR §§ 410.20, 410.71, and 410.73-410.75.

[4] 42 CFR § 410.26(b); The Act §§ 1861(s)(2)(A) (incident-to physician's services), 1861(s)(2)(K)(i) (incident-to physician assistant's services), 1861(s)(2)(K)(ii) (incident-to nurse practitioner's or clinical nurse specialist's services), 1861(gg)(I) (incident-to nurse-midwife's services), and 1861(ii) (incident-to qualified psychologist's services). The incident-to provisions allow physicians and certain other practitioners to bill Medicare under their National Provider Identifier numbers for services furnished incident-to their professional services by auxiliary personnel (e.g., a nurse practitioner employed by the same entity). To be covered as incident-to services, the services must meet certain conditions, including being an integral, although incidental, part of the physician's or other practitioner's personal professional services in the course of diagnosis or treatment of an injury or illness (42 CFR § 410.26(b)(2)).

[5] The Act § 1862(a)(I)(A).

services using one of six psychotherapy Current Procedural Terminology (CPT®)[6, 7] codes, depending on the time spent on psychotherapy and whether the service was performed alone or in conjunction with an E&M service.[8, 9] Providers must bill the appropriate CPT code based on the actual time spent on psychotherapy. (Figure 1, shows the psychotherapy CPT codes and their respective descriptions). Each code has an associated time range. For example, CPT codes 90832 and 90833 are billed for 16 to 37 minutes of psychotherapy. (Medicare does not cover psychotherapy services lasting less than 16 minutes.)[10] There is also a CPT code for group psychotherapy and another for interactive complexity, which is an add-on code that can be billed with the psychotherapy service.[11]

Figure 1: Psychotherapy CPT Codes and Descriptions

CPT Code	Description
90832	Psychotherapy (30 min)
90833	Psychotherapy (30 min + E&M)
90834	Psychotherapy (45 min)
90836	Psychotherapy (45 min + E&M)
90837	Psychotherapy (60 min)
90838	Psychotherapy (60 min + E&M)
90853	Group Psychotherapy
90785	Interactive Complexity

[6] *CPT copyright 2020 American Medical Association. All rights reserved.*

Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein.

CPT is a registered trademark of the American Medical Association.

[7] **U.S. Government End Users**. CPT is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. Use of CPT in connection with this product shall not be construed to grant the Federal Government a direct license to use CPT based on FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items).

[8] The five-character codes and descriptions included in this document are obtained from the 2020–2021 edition of the AMA's CPT. CPT is developed by the AMA as a listing of descriptive terms and five-character identifying codes and modifiers for reporting medical services and procedures. Any use of CPTs outside of this report should refer to the most current version of the procedural terminology available from AMA.

[9] 42 CFR § 424.5(a)(6); 45 CFR § 162.1002(c)(1) and (a)(5).

[10] AMA, CPT 2020–2021.

[11] AMA, CPT 2020–2021. "Interactive complexity" refers to specific communication factors that complicate the delivery of psychiatric procedures, including more difficult communication with discordant or emotional family members. The interactive complexity CPT code (90785) may be used in conjunction with CPT codes for psychotherapy.

How Much Are Nonphysician Practitioners Paid for Psychotherapy Services?

For psychotherapy services billed by psychiatrists and psychologists, Medicare allows for payment of 100 percent of the amount shown in the Medicare Physician Fee Schedule. For psychotherapy services billed by nurse practitioners and clinical social workers, Medicare allows for payments of 85 percent and 75 percent, respectively, of the Physician Fee Schedule amount. However, services provided by nonphysicians can be reimbursed at the physician rate if they are billed as incident-to the services of a physician, psychiatrist, or psychologist.

To be paid for an individual psychotherapy service, the provider must furnish the information necessary to determine the amount due to the provider.[12] Medical records supporting psychotherapy services provided to Medicare enrollees must indicate the time spent on the psychotherapy encounter.

Mental Health Center of Florida

MHCF is located in Fort Lauderdale, Florida, and provides a range of treatment options for mental health patients, including behavioral and psychological therapies. During our audit period, Medicare reimbursed MHCF more than $5.4 million for psychotherapy services.

HOW WE CONDUCTED THIS AUDIT

Our audit covered 65,686 claim lines for psychotherapy services for which MHCF received Medicare Part B reimbursement totaling more than $5.4 million during our audit period.[13] We reviewed a simple random sample of 100 claim lines with payments totaling $7,924. The 100 claims are broken down by the following CPT codes:

- 44 services for 60 minutes of psychotherapy (CPT code 90837);
- 8 services for 45 minutes of psychotherapy (CPT code 90834); and
- 48 services for 30 minutes of psychotherapy (CPT code 90832).

We requested medical records for each psychotherapy service in our sample. We then reviewed the medical records to determine whether MHCF met Medicare requirements. However, we did not determine whether the services were medically necessary.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to determine a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A describes our audit scope and methodology.

[12] The Act § 1833(e).

[13] For the purpose of this audit, a claim line is a psychotherapy service rendered on a specific date of service.

FINDINGS

For 99 of the 100 sampled claim lines, MHCF complied with Medicare requirements. However, for 1 of 100 sampled claim lines, MHCF did not comply with these requirements. Specifically, we determined that MHCF incorrectly coded a service billed to Medicare (1 claim line). The deficiency occurred because of human error.

As a result, Medicare paid $55 for the 1 sampled claim line for which providers did not meet Medicare requirements.

MHCF BILLED THE INCORRECT CPT CODE

Payment must not be made to a provider for an item or service unless "there has been furnished such information as may be necessary in order to determine the amounts due such provider" (the Social Security Act § 1833). Providers must bill the CPT code with the number of minutes closest to the actual time that was spent on psychotherapy: CPT codes 90832 and 90833 for 16 to 37 minutes of psychotherapy, CPT codes 90834 and 90836 for 38 to 52 minutes of psychotherapy, and 90837 and 90838 for 53 or more minutes of psychotherapy (AMA, CPT 2020–2021). Providers must not bill for psychotherapy of less than 16 minutes (AMA, CPT 2020–2021).

For 1 of 100 sampled claim lines, MHCF billed an incorrect CPT code. MHCF billed CPT code 90837 for psychotherapy services lasting 53 minutes or longer, for which Medicare paid $110. However, the medical records showed that 30 minutes of psychotherapy time had been provided. Therefore, MHCF should have billed CPT code 90832 for 30 minutes of psychotherapy services and should have been paid $55. As a result, Medicare overpaid $55 for the one sampled claim line that did not meet Medicare coding requirements. MHCF indicated the provider inadvertently billed the incorrect CPT code.

CHANGES MHCF MADE TO THEIR QUALITY ASSURANCE PROGRAM AFTER OUR AUDIT PERIOD

Since our audit period ended, MHCF stated that it updated its Quality Assurance (QA) program by including A.M. and P.M. designations in a new software system, which makes it easier for the provider to calculate the number of minutes per psychotherapy session. Had MHCF had this new software system during our audit period, the risk of the billing error identified in our audit may have been reduced.

RECOMMENDATION

We recommend that the Mental Health Center of Florida monitor and evaluate the effectiveness of the QA program updates to ensure that documenting of time spent on psychotherapy services meets Medicare requirements.

MHCF COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, MHCF did not indicate concurrence or non-concurrence with any of our recommendations. However, MHCF did not concur with our finding that they did not meet Medicare requirements for incident-to services. In addition, MHCF concurred with the one error related to an incorrectly billed CPT code. MHCF indicated they are working on a programmatic method to ensure compliance between psychotherapy time billed and the correct CPT code. Lastly, MHCF also indicated that our audit was initiated to confirm fraudulent behavior.

After reviewing MHCF's comments and additional medical records provided, we removed the finding and recommendations related to the incident-to services. We note that this audit was initiated based on an analysis of Medicare payments for psychotherapy services claimed by MHCF and not to confirm fraudulent behavior.

MHCF written comments, excluding the medical records that contained personally identifiable information, are included as Appendix C.

PSYCHOTHERAPY SERVICES DID NOT COMPLY WITH INCIDENT-TO REQUIREMENTS

MHCF Comments

MHCF stated it strictly complies with State and Federal regulations governing incident-to services and the supervision of pre-doctoral and post-doctoral residents. MHCF stated it maintains supervisory logs directly cross-referenced with each supervising physician's pay stub that notes the exact location for supervising the residents. MHCF added it does not keep a copy of the sign-in logs maintained by the assisted living facilities, independent living facilities, or nursing facilities.

In addition, MHCF asserted the medical records are signed by the rendering provider. When the rendering provider is a pre-doctoral intern or post-doctoral resident, the supervising provider co-signs the medical record in accordance with Florida Statutes and regulations. MHCF providers use electronic medical record software for documentation of this provider supervision. MHCF provided an example of an electronic medical record showing the rendering provider and supervising provider signatures.

In response to the draft report, MHCF provided additional documentation verifying the supervising physician and auxiliary personnel (i.e., pre-doctoral intern) rendering the service were both at the same location at the same time for the sample claims in question.

Office of Inspector General Response

During our fieldwork we requested documentation, such as key card access logs or sign-in logs, that would demonstrate the supervising physician was onsite and immediately available to furnish assistance and direction throughout the service being rendered by auxiliary personnel. MHCF provided documentation such as supervising physician attestation statements, biweekly pay stubs, and biweekly supervision assignment log forms. However, we were unable to determine from this documentation whether the supervising physician was onsite during the specific date of the rendering service, and therefore, questioned the incident-to claims.

In response to our draft report, MHCF provided additional documentation supporting the 32 sampled claim line incident-to errors. This additional documentation provided evidence verifying the supervising physician and pre-doctoral intern providing the service were both at the same facility during the same time, which met the incident-to direct supervisory requirement. After reviewing MHCF's comments and supporting documentation, we removed all 32 errors related to incident-to services and all recommendations related to these errors.

PURPOSE OF OFFICE OF INSPECTOR GENERAL AUDIT

MHCF Comments

MHCF asserted, "that the purpose of this audit was to confirm or disaffirm fraudulent behavior rather than uncovering fraud by applying portions from the medical records to match policies with deliberation to discount the valuable and necessary services being rendered."

Office of Inspector General Response

We did not initiate this audit to confirm or disaffirm fraudulent behavior, and the report makes no such allegations. Rather, we initiated this audit after analyzing Medicare Part B psychotherapy claims data provided during 2019 and determining that MHCF was among the highest-reimbursed individual providers in the nation.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered Medicare Part B claims for psychotherapy services for which MHCF received Medicare reimbursement for services provided from January 1, 2019, through December 31, 2020 (audit period). Our sampling frame consisted of 65,686 claim lines totaling $5,431,391. We reviewed a simple random sample of 100 claim lines with payments totaling $7,924. The sample included the following:

- 44 services for 60 minutes of psychotherapy (CPT code 90837);
- 8 services for 45 minutes of psychotherapy (CPT code 90834); and
- 48 services for 30 minutes of psychotherapy (CPT code 90832).

We reviewed medical records to determine whether MHCF complied with Medicare requirements and guidance for billing psychotherapy services. We did not determine whether the services were medically necessary.

We did not review MHCF's overall internal control structure. Rather, we limited our review of internal controls to those that were significant to our objective. This includes reviewing the MHCF's established policies and procedures, management oversight structure, segregation of duties, and trainings provided to its staff.

We performed audit work from February 2022 to October 2024.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;

- interviewed officials from MHCF to gain an understanding of their policies and procedures for providing, documenting, and billing psychotherapy services;

- obtained from CMS's National Claims History file MHCF's paid Medicare Part B claims for psychotherapy services billed during our audit period;

- created a sampling frame of 65,686 claim line items for psychotherapy services, with total Medicare Part B payments of $5,431,391, and selected a simple random sample of 100 psychotherapy claim line items for review;

- obtained medical records from MHCF for each sampled claim line;

- reviewed the medical records to determine whether MHCF complied with Medicare documentation requirements;

- discussed the results of our audit with MHCF officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
Medicare Improperly Paid Providers for Some Psychotherapy Services, Including Those Provided via Telehealth, During the First Year of the COVID-19 Public Health Emergency	A-09-21-03021	5/02/2023
Medicare Telehealth Services During the First Year of the Pandemic: Program Integrity Risks	OEI-02-20-00720	8/29/2022
Psychotherapy Services Billed by a New York City Provider Did Not Comply With Medicare Requirements	A-02-21-01006	3/29/2022
Telehealth Was Critical for Providing Services to Medicare Beneficiaries During the First Year of the COVID-19 Pandemic	OEI-02-20-00520	3/15/2022
On-Site Psychological Services, P.C.: Audit of Medicare Payments for Psychotherapy Services	A-02-19-01012	7/21/2020
Grand Desert Psychiatric Services: Audit of Medicare Payments for Psychotherapy Services	A-09-19-03018	4/20/2020
Oceanside Medical Group Received Unallowable Medicare Payments for Psychotherapy Services	A-09-18-03004	8/28/2019

APPENDIX C: STATISTICAL SAMPLING METHODOLOGY

SAMPLING FRAME

Our sampling frame consisted of 65,686 claim lines for psychotherapy services provided by MHCF from January 1, 2019, through December 31, 2020, with Medicare Part B payments of $5,431,391. The frame included claim lines 1) with paid amounts of $50 or more and 2) that were not previously reviewed by a CMS contractor.

SAMPLE UNIT

The sample unit was a Medicare Part B claim line of psychotherapy services rendered by MHCF.

SAMPLE DESIGN AND SAMPLE SIZE

We used a simple random sample and selected 100 claim line items of psychotherapy services provided by MHCF.

SOURCE OF RANDOM NUMBERS

We generated the random numbers with the OIG, Office of Audit Services, statistical software.

METHOD OF SELECTING SAMPLE ITEMS

We sorted the items by Claim Control Number and then consecutively numbered the items in the sampling frame. We then generated the random numbers in accordance with our sample design. With these random numbers, we selected the corresponding frame items for review.

ESTIMATION METHODOLOGY

We have chosen not to report any estimates of unallowable costs in the sampling frame due to the low error rate found in the sample.

KAREN B. SCHAPIRA, PLLC
Representing Healthcare Providers

November 22, 2024

via Upload to Kiteworks
Kevin King, Senior Auditor
Department of Health and Human Services
Office of Inspector General
8659 Baypine Road, Suite 203
Jacksonville, FL 32256

RE: OIG Audit A-04-21-06151
Nationwide Audit of Psychotherapy Medicare Part B Claims

Dear Mr. King:

As you know, this firm represents Mental Health Center of Florida, LLC ("MHCFL") a psychotherapy group practice engaging the services of mental health providers to render individual and group psychotherapy to Medicare beneficiaries in multiple locations throughout the State of Florida. On or about October 28, 2020, the Department of Health and Human Services, Office of Inspector General ("OIG") notified MHCFL that it initiated *a survey of Medicare payments for psychotherapy services claimed by MHCFL* as *part of a nationwide survey of Medicare Part B claims for psychotherapy services*. MHCFL provided all requested documentation in support of its services. During the exit interview, OIG informed MHCFL that the company failed to meet the Medicare *incident to* supervision requirements. On or about October 23, 2024, OIG issued its Preliminary Audit Report ("PAR") boldly stating that **Mental Health Center of Florida did not Meet Medicare Billing Requirements for Some Psychotherapy Services** (October 2024, A-04-21-06251). MHCFL disagrees with the general premise of the OIG's review and conclusion. MHCFL does not concur with 33 of the 32 errors identified in the PAR.

There is a distinct juxtaposition between the federal, state, and local law enforcement efforts to combat fraud, waste, and abuse of the Medicare program and the inherent needs of the Medicare population in the delivery of medical health and behavioral health care services. In order to justify the law enforcement programs (audit, investigation, strike-force), the agencies must exhibit results. However, law enforcement must differentiate between criminal behavior and human error. Criminal behavior must be stopped. Human error should be recognized and curbed through education. If the agencies fail to make the distinction, we end up with a failure to provide necessary healthcare services, both medical and behavioral, as recognized by the OIG

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in its report dated March 2024, entitled, A Lack of Behavioral Health Providers in Medicare and Medicaid Impedes Enrollees' Access to Care.[1]

The following is MHCFL's statement of specific reasons of nonconcurrence with the OIG's *draft review* findings and actions taken or planned. MHCFL also addresses the single incident of concurrence and the corrective action implemented to identify past errors and avoid future errors.

BACKGROUND

The OIG initiated audits of Part B Psychotherapy Services subsequent to a finding that the Medicare Program paid approximately 3 billion dollars for psychotherapy services from January 2017 through December 31, 2019.[2,3]

The OIG is tasked with the collaboration between federal, state, and local law enforcement agencies to prevent and combat health care fraud, waste, and abuse. Medicare fraud strike force teams, established in 2007, operate in Miami, Tampa, and Orlando, Florida; and approximately 15 other states, regions, and the District of Columbia.[4] As of September 30, 2022, the cumulative statistics for criminal actions were 2,688; indictments were 3,483; and investigative receivables were $4.7 billion.

In March 2020, Congress and the HHS Secretary authorized CMS to temporarily implement waivers to Medicare program requirements expanding services via telehealth.[5] The OIG initiated an audit of psychotherapy services provided via telehealth and psychotherapy services provided face-to-face having found that Medicare paid $1 billion during the audit period (March 2020-February 2021). The OIG found multiple providers who failed to properly bill the Medicare program.[6]

In March 2024, OIG performed a review of the *lack* of behavioral health providers recognizing that "[w]ithout enough behavioral health providers willing to participate in Medicare and Medicaid, enrollees may experience difficulty accessing providers or delays in care and may forgo treatment altogether." The report states that "even before the COVID-19 pandemic, access to high-quality behavioral heath care was often hard to find, but the increased need for services in the wake of the pandemic has challenged behavioral health providers and enrollees around the country."

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[1] OIG, A Lack of Behavioral Health Providers in Medicare and Medicaid Impedes Enrollees' Access to Care, OEI-02-22-00050 (March 2020).
[2] OIG, Grand Desert Psychiatric Services: Audit of Medicare Payments for Psychotherapy Services, A-09-19-03019 (April 2020).
[3] OIG, On-Site Psychological Services, P.C.: Audit of Medicare Payments for Psychotherapy Services, A-02-19-01012 (July 2020).
[4] OIG, Medicare Fraud Strike Force, oig.hh.gov/fraud/strike-force (visited, Nov. 21, 2024).
[5] OIG, Medicare Improperly Paid Providers for Some Psychotherapy Services, including those Provided via Telehealth During the First Year of the COVID-19 Public Health Emergency, A-09-21-03021 (May 2023).
[6] *See for example*, A-09-19-03019 (April 2020); A-02-19-01012 (July 2020); and A-09-21-03021 (May 2023).

MHCFL suggests that the OIG and its partner law enforcement agencies need to look at the alleged errors cited in this PAR and recognize that MHCFL is neither wasting nor abusing the Medicare program. MHCFL is not committing fraud, neither intentionally nor by happenstance. MHCFL is a conscientious, behavioral health provider rendering psychotherapy services to Florida's most vulnerable population, the elderly.

WHO IS THE PROVIDER?

MHCFL is a Florida psychotherapy group practice[7] providing individual and group psychotherapy throughout the State of Florida to Medicare beneficiaries primarily residing in assisted living facilities ("ALF"), independent living facilities ("ILF"), skilled nursing facilities ("SNF"), nursing facilities ("NF"), and the patient's home. MHCFL is part of a mental health enterprise consisting of multiple clinical entities operating throughout the State of Florida. The enterprise centralizes operations through a management company located in Broward County, Florida. The use of multiple entities is for US federal tax purposes and operational efficiency.

MHCFL is a member of the Association of Psychology Postdoctoral and Internship Centers ("APPIC"). In conjunction with APPIC, MHCFL offers a unique opportunity to interns enrolled in an APA[8] or CPA[9] accredited doctoral program in clinical or counseling psychology, the Pre-Doctoral Internship Program (the "PDIP"). The PDIP participates in the APPIC Match and utilizes the APPIC Application for Psychology Internships. MHCFL conforms to Florida Statutes and regulations regarding contracts, stipends, supervision, patient interaction, and face-to-face supervisory sessions. MHCFL matches up interns with qualified, licensed psychologists, who are legally obligated to review medical records, conduct weekly, individual supervision of the interns, and 90-day, 6-month, and annual performance reviews. It is also important to note that each intern in the PDIP attends an initial three-day orientation into the program followed by a period of shadowing licensed psychologists as they treat patients in the office setting and in nursing homes and assisted living facilities. Interns are permitted to progress from shadowing licensed psychologists to being supervised directly as the intern conducts one-on-one psychotherapy services only when the licensed psychologist deems the intern ready. Throughout the PDIP, interns attend didactics and group supervising weekly, in four-hour sessions.

SUPERVISION

PDIP Supervised Experience

Florida Statutes and regulations require each candidate for psychology licensure to complete 4000 hours of supervised experience, 2000 hours of which are recognized by the Florida Board of Psychology (the "Board") as being completed by the candidate's internship. The initial 2000

[7] 42 CFR § 411.352.
[8] American Psychological Association.
[9] Canadian Psychological Association (*Société Canadienne de Psychologie*).

hours are conducted by pre-doctoral interns as described above; and the remaining 2000 hours are conducted by post-doctoral residents or fellows (collectively, "Residents") under the Florida Statutes and regulations. FLA. ADMIN. CODE R. 64B19-11.005(1)(b) defines a Psychology Resident or Post-Doctoral Fellow as *a person who has completed the educational requirements for licensure and intends, from the start of the supervised experience, to meet the 2000 hours of supervised requirement for licensure which is not part of the internship*.

The supervision requirements are strictly set forth under the FLA. ADMIN. CODE R. 64B19-11.005(3) requiring that the supervisor or supervisors be licensed in Florida and in good standing with the Board. The supervisor must certify that he or she has (a) entered an agreement with the Resident; (b) determined that the Resident is capable of providing competent and safe psychological services to clients; (c) maintained professional responsibility for the Resident; (d) provided two hours of clinical supervision each week at least one hour individual, face-to-face with the Resident; (e) prevailed in all professional disagreements with the Resident; (f) kept informed of psychological services rendered by the Resident to the client; and (g) advised the Board if he or she received any complaints about the Resident or if the Resident is less than fully ethical, professional, or qualified for licensure.

The MHCFL program requires each Resident to attend an initial orientation followed by shadowing their assigned supervisors while the supervising psychologist treats patients in the office, nursing home, and assisted living settings. The Residents gradually progress from shadowing to providing direct psychotherapy services to the patients. Residents maintain a case load of approximately 20-25 clients plus testing cases engaging in an aggregate of 30 clinical contact hours per week. As required by Florida regulations, each Resident meets with his or her supervisor individually, weekly in addition to 2-hour group supervision weekly to review specific cases and for peer support. Finally, MHCFL conducts educational seminars covering an array of practice and clinical issues for its Residents.

Supervision

MHCFL complies with each regulatory requirement in its supervision of Residents. Each Resident enters a Psychology Post-Doctoral Resident Services Agreement which includes an annual stipend, specific duties, and responsibilities in accordance with federal and state regulations, and representations and warranties wherein the Resident asserts that he or she is eligible to participate in the program. Each supervisor signs a Supervision Joinder to his or her Psychology Services Agreement wherein he or she agrees to abide by the Florida Statutory and regulatory requirements to supervise a Resident including the specific duties imposed by MHCFL and detailed in this letter.

None of the MHCFL supervisors take their supervisory duties lightly knowing that his or her own Florida license to practice psychology is on the line each time a Resident enters a patient's room or home to render psychological services. More importantly, the supervisors are cognizant of their patients' needs. Each patient seen by a Resident is the patient of the supervising psychologist first and foremost. The medical records evidence that a Florida licensed

psychologist completed the initial plan of care and the initial therapy sessions. The medical records also identify the supervising clinician.

A clinical psychologist, as defined by Medicare, is an individual holding a doctoral degree in psychology, licensed by the state in which he or she practices, independently furnishing diagnostic, assessment, preventive, and therapeutic services directly to individuals. As of July 1, 1990, the diagnostic services of Clinical Psychologists ("CP") and psychological services rendered incident to the services of a CP are covered the same way as the services furnished incident to a physician's services are covered *if the CP is legally authorized to perform the services under applicable licensure laws of the state in which they are furnished*. In other words, a CP may supervise Residents in the same manner that physicians supervise non-physician practitioners ("NPP") if the services being supervised by the CP are within the scope of the CP's license. The permissible services covered include, without limitation, diagnostic and therapeutic services that the CP is legally permitted to perform in accordance with Florida Statutes. The permissible incident to services includes, without limitation:

- Mental health services which are commonly furnished in a CP's office.
- Integral, although incidental, part of professional services performed by the CP.
- Under the direct, personal supervision of the CP.
- Furnished without charge or included in the CP's bill.
- Performed by an employee of the CP.
- Diagnostic psychological testing services when furnished under the general supervision of a CP.

CMS issued a revised rule effective January 1, 2020 changing the supervision requirements for certain outpatient therapeutic services rendered incident to a Physician's Service.

> Starting January 1, 2020, CMS requires, as the minimum level of supervision, general supervision by an appropriate physician or non-physician practitioner in the provision of all therapeutic services to hospital outpatients, including CAH outpatients. "General supervision" means the definition specified at 42 CFR 410.32(b)(3)(i), that is, the procedure or service is furnished under the physician's *overall direction and control*, but the **physician's presence is not required during the performance of the procedure**. CMS may assign certain hospital outpatient therapeutic services either direct supervision or personal supervision. When such assignment is made, "direct supervision" means the definition specified at 42 CFR 410.32(b)(3)(ii), that is, the physician must be immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician or must be present in the room when the procedure is performed. "Personal supervision" means the definition specified at 42 CFR 410.32(b)(3)(iii), that is, the physician must be in attendance

> in the room during the performance of the service or procedure (*emphasis added*).[10]

A list of services that must be furnished under direct supervision are available on the CMS OPPS website[11] and include:

HCPCS CODE	DESCRIPTION	HOP Evaluation Date	CMS Decision	Effective Date Services Prior to 01/01/20	Level of Supervision 1/1–2/29/20	Level of Super-vision during COVID-19
90832	Psytx pt&family (30 min.)	02/2012	General	07/01/2012	General	General
90834	Psytx pt&family (45 min.)	02/2012	General	07/01/2012	General	General
90837	Psytx pt&family (60 min.)	02/2012	General	07/01/2012	General	General
90853	Group psychotherapy	02/2012	General	07/01/2012	General	General
90785	Psytx complex interactive	02/2012	General	07/01/2012	General	General
90846	Family psytx w/o patient	02/2012	General	07/01/2012	General	General
90849	Family psytx w/patient	02/2012	General	07/01/2012	General	General

CMS issued a revised rule effective January 1, 2024[12] clarifying the supervision from direct to general supervision recognizing that:

> We offer an exception to the direct supervision requirement for *incident to* behavioral health services provided by auxiliary personnel. That is, incident to behavioral health services can be provided under the general supervision of a physician or an NPP, instead of direct supervision. Under general supervision, the physician or NPP may be contacted by phone if necessary, as the

[10] CMS Manual System, Pub 100-02 Medicare Benefit Policy, Transmittal 266, (Jan. 1, 2020).
[11] http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html.
[12] CMS MLN Booklet, Medicare & Mental Health Coverage, MLN1986542 (Jan. 2024).

> physician's or NPP's presence isn't required during a procedure (emphasis added).
>
> We don't define behavioral health services by HCPCS codes; however, we generally understand a behavioral health service to be any service a provider furnishes for the diagnosis, evaluation, or treatment of a mental health disorder, including an SUD.

The APA proposed legislation to reimburse advanced psychology trainees creating opportunities and incentives for the trainees and the supervising psychologists, recognizing that:

> The COVID-19 pandemic placed an enormous strain on the nation's mental health, and worsened preexisting gaps in access to mental health treatment. Recent data shows a surge in emergency department visits attributable to mental health crises, suicide attempts, and drug overdoses during the pandemic. Between June 2020 and June 2021, approximately 100,000 people in the United States died from a drug overdose, a substantial increase over the prior year. In January 2021, 41% of adults reported symptoms of anxiety or depression compared to 36% prior to the pandemic. Underserved communities—such as rural areas, communities of color, LGBTQ+ individuals, and/or people living with chronic illness or a disability—have seen the largest increase in demand for psychological services. These populations continue to face unique challenges in recruiting licensed behavioral health care professionals to serve their needs.[13]

All MHCFL licensed psychologists and Residents render clinical psychological services in accordance with the above criteria.

The investigation and audit process is designed to afford checks and balances between providers and reviewers. The CMS Center for Program Integrity ("CPI") supervises the medical review contractors to ensure their performance *in accordance with CMS operating instructions* (emphasis added).[14] Clinical Review Judgment requires two steps: (1) the synthesis of all submitted medical record information to create a longitudinal clinical picture of the patient; and, (2) the application of the clinical picture to the review criteria to determine whether the provider met the clinical requirements of the relevant policy.[15] Clinical review judgment neither (a) replaces poor or inadequate medical records; nor (b) overrides, supersedes, or disregards a policy requirement.[16]

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[13] APA Services, Inc., Legislation to Support Reimbursement for Advanced Psychology Trainees in Medicare, (2023).
[14] CMS, Medical Review and Education, cms.gov (updated: 09/16/2022).
[15] CMS, Program Integrity Manual, Chapter 3, § 3.3.1.1(B).
[16] *Id.*

In 2008, Congress enacted the Mental Health Parity and Addiction Equity Act ("MHPAEA") to ensure equal access to mental health and substance use disorder benefits under commercial and government insurance policies. The MHPAEA does not extend to Medicare. Mental Health Parity is nonetheless an essential premise that treatment of mental health issues are not less important to human health and welfare than treatment of medical conditions. To close this gap, on July 27, 2022, "the Legal Action Center, Center for Medicare Advocacy and Medicare Rights Center released a set of legislative principles for Congress to use as it considers additional policies in the Medicare program to better address the escalating overdose and mental health crisis."[17] The Center for Medicare Advocacy states that 1 in 4 Medicare beneficiaries live with a mental health condition.[18] The OIG recently recognized the *unprecedented mental health crisis*[19] facing the United States and that *few behavioral health actively serve Medicare and Medicaid enrollees.*[20]

MHCFL retains the services of multiple mental health providers licensed by the State of Florida and eligible to render services to Medicare beneficiaries. The OIG is questioning the supervision of PDIP providers in accordance with the *incident to* rules as they pertain to clinical psychology services. It is important to presume that the Medicare credentialing process ensures that its licensed health care providers are honorable and intend to render health care services in compliance with state, federal, and agency regulations. It is equally important to presume that health care fraud and abuse is the exception, *not the rule*. To perpetuate a fraud of this magnitude, the licensed providers rendering the services would have to be equally involved in the *questionable billing practices*. The purpose of these audits is to confirm or disaffirm fraudulent behavior rather than *uncovering* fraud by applying portions from the medical records to match policies with deliberation to discount the valuable and necessary services being rendered.

PAR FINDINGS AND RECOMMENDATIONS

The OIG found that MHCFL erroneously billed 1 out of 100 records sampled with the wrong CPT code resulting in a net overpayment of $55.00.

MHCFL concurs with the finding. The medical record shows inconsistency between the 30 minutes documented for the session and the CPT code documented indicating greater than 53 minutes. MHCFL engages the services of a new billing company. Moreover, MHCFL routinely reviews billing and coding records to avoid incorrect billing. As of the OIG Audit, MHCFL is working on a programmatic method for ensuring accordance between time and CPT code.

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[17] Center for Medicare Advocacy, Release of Parity Principles to Optimize Medicare Coverage of Substance Use Disorder and Mental Health Care, Press Release (July 27, 2022).
[18] *Id.*
[19] OIG, A Lack of Behavioral Health Providers in Medicare and Medicaid Impedes Enrollees' Access to Care, OEI-02-22-00050 (March 2020).
[20] *Id.*

The OIG found that MHCFL did not comply with *incident to* requirements for 32 of 100 claims noting that "the records did not contain evidence that the supervising psychologist was directly supervising the pre-doctoral intern providing the services and that the record shows that the supervising psychologist did not perform the initial psychological evaluation. The OIG found that MHCFL did not maintain sign-in logs to document that the supervising provider was on-site at the supervisee's location while the supervisee rendered services.

MHCFL disagrees with the finding. As delineated above, MHCFL strictly complies with State and federal regulations governing incident-to services and the supervision of pre-doctoral and post-doctoral residents. Contrary to the statement by the OIG that the provider "did not maintain sign-in logs, MHCFL does maintain supervision logs directly cross referenced with each supervisor's paystub noting the exact location each supervising or responsible for supervising the PDIP resident. MHCFL *does not keep a copy* of the **sign-in logs maintained by the ALF, ILF, or NF**.

The OIG found that "[t]he record did not contain evidence that the supervising psychologist was directly supervising the pre-doctoral intern."

MHCFL disagrees with the finding. The medical records are signed by the rendering provider. When the rendering provider is a pre-doctoral intern or post-doctoral resident, the supervising provider co-signs the medical record as supervising in accordance with Florida Statutes and regulations. MHCFL providers use electronic medical record software for documentation (*see*, for example, **Schedule A** attached to and incorporated in this letter).

The EMR software used is PsyNote® as indicated in the footer section of each record (*see*, **Schedule A**, footnote). Created in 1992, PsyNote® regularly reviews and revises its signature policy in accordance with the published material available by CMS, AHIMA, and other similar agencies. PsyNote® updated the current version following a review in May 2018 and remains compliant through today. To electronically sign a medical record entry, PsyNote® requires the user/provider to login securely before entering data. The rendering provider's name is listed on the medical record as "Provider" (see, **Schedule A**, Provider). After entering the data, the user/provider may choose the option to electronically sign the entry which will close the document. The user/provider may choose not to sign the entry clicking the *Save as Draft* button leaving it unsigned and open to be completed later. The user/provider may *Complete and Sign* an entry which will close the record. In other words, **a signed entry is a completed and closed entry**.

When a provider completes and signs an entry, the date of signature and date of record closing appears next to the signature (*see*, **Schedule A**, signature line. The date next to the signature is not the date of service ("DOS"). Anyone accessing the entry will see the DOS at the top of the page (*see*, **Schedule A**, Date of Service) and the date the provider completed and signed the entry at the bottom of the page. PsyNote® has a function for revision of an entry. When a provider revises a note, the provider must perform the same login process as a new note entry. The original note remains on file in accordance with medical record documentation regulations. The

revised entry will appear on the medical record with the date of the revision. The date of the signature(s) will be the date the provider completes and signs the revised entry. Where services are rendered under supervision, the rendering provider, often referred to as the "intern" selects the supervising provider from the drop-down list. Following creation of the note, the intern has the option of completing and signing or saving as draft, as an *unsigned* note. It is the responsibility of the supervising provider to review the note as part of their normal supervisory activity.

The PsyNote® electronic signature protocol complies with the Level Two Signature protocol:

> Level 2 – Button, PIN, Biometric, or Token: a frequently used e-signature methodology in EHR systems includes clicking a button or entering a unique personal identification number (PIN), electronic identification, token, or biometric scan at the completion of an entry for the signature process. Strengthening the signature process minimizes the risk that an individual can refute the validity of the entry. EHR systems and organization policy should require some action that represents this signing process, such as pushing an attest button.

MHCFL restricts its psychology interns from closing a record. Following entry of a record, the intern **must** select *Save as Draft* which, as noted above, is an unsigned note. The intern meets with his or her supervisor to review the record entry. If the supervisor authorizes the note, the intern presses *Complete and Sign* which dates and closes the entry. The supervising psychologist's name is entered beneath the signature of the rendering provider (*see*, **Schedule A**, supervising psychologist). While Florida Statutes require consultation reports and summaries be co-signed by the supervising psychologist, signing the progress note is left to the supervisor's discretion.[21]

Medicare Signature Requirements

Medicare requires a valid signature for services rendered or ordered by the signatory, handwritten or electronic, legible or which may be authenticated by comparing it to a signature log or attestation statement.[22] The medical review guidelines when an electronic signature is use require systems and software products to include protections against modification using administrative safeguards that meet all standards and laws.[23] As specifically stated in this section, the Provider uses PsyNote® which meets this CMS guideline.

Each of the medical records for dates of service under this review is electronically signed in accordance with this paragraph and the specifications delineated on Schedule A. Moreover, MHCFL provided signature attestations executed by the supervising provider

[21] Fla. Admin. Code R. 64B19-11.005(1)(e).
[22] CMS, Complying with Medicare Signature Requirements, MLN905364 (Apr. 2022).
[23] *Id.*

attesting to his or her supervision of the PDIP resident. Each supervising provider enters a contract with the supervisee which is on file with MHCFL and AAPIC.

MHCFL provided paystubs of supervisors showing that they were paid for services rendered during the two-week period during which the patient received services; supervision logs showing the location of supervision reported by the supervisor; email correspondence evidencing the date that the supervisor submitted his or her log; the location(s) reported by the supervisor for payment; and signature attestation forms executed by each supervisor who is also a licensed provider. Enclosed as **Schedule B** is additional supporting documentation which supplements those documents previously provided and supports previously unsupported records.

It is important to further note, that the pre-doctoral interns and post-doctoral interns who rendered the services for which the OIG states that "none of the 32 sampled claim lines in error contained evidence that a licensed practitioner was on-site and directly supervising" the services relied upon the supervision to fulfill the Statutory terms necessary for licensing. While the OIG states that there is no intent to challenge the validity of the issued licenses, questioning supervision casts doubt on the validity of the licenses bestowed upon the Residents and questions the ethics of the licensed providers who signed supervision agreements and medical records as supervisors.

CONCLUSION

The purpose of the OIG and other collaborating law enforcement agencies is to ensure the there is no fraud, abuse, or waste in the Medicare program. It is not intended to *ferret out* fraud in the provider's medical record documentation. A licensed provider's signature on a medical record is that provider's attestation that the provider rendered the services. In the instant case, the supervising provider's signature indicates his or her attestation that the services rendered were directly supervised by the licensed provider.

MHCFL is constantly evaluating its program, educating its employees, informing its providers of the Medicare regulations, and encouraging industry partners to conduct their businesses in a compliant manner. As Medicare providers, we are partners in the fight *against* fraud, abuse, and waste of Medicare resources. The goal should not be to eliminate mental health services for the nation's most vulnerable population.

Please contact this office with any further questions or concerns.

Sincerely,
Karen B. Schapira, PLLC

Karen B. Schapira

Encl.

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OIG Hotline Operations accepts tips and complaints from all sources about potential fraud, waste, abuse, and mismanagement in HHS programs. Hotline tips are incredibly valuable, and we appreciate your efforts to help us stamp out fraud, waste, and abuse.

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